

NATIONAL HEALTH SERVICE ACT 1977

Directions as to the functions of Strategic Health Authorities (GMS Contract Disputes) 2004

The Secretary of State for Health, in exercise of powers conferred by sections 16D, 17 and 18 of the National Health Service Act 1977(a), and all other powers enabling him in that behalf, hereby gives the following Directions:-

Commencement and extent

- 1.-(1) These Directions shall come into force on 9th March 2004.
- (2) These Directions apply to England only.

Interpretation

2. In these Directions—

“contractor” means a party to a GMS contract;

“GMS contract” means a general medical services contract under section 28Q of the National Health Service Act 1977;

“default contract” means a contract with a Primary Care Trust made pursuant to article 13 of the Order which is on the terms set out, or agreed in accordance with any options set out, in the Default Contract 2004 dated 18th February 2004(b);

“FHSAA” means the Family Health Services Appeal Authority established by section 49S of the National Health Service Act 1977(c);

“FHSAA(SHA)” means the Family Health Services Appeal Authority (Special Health Authority) established by article 2 of the Family Health Services Appeal Authority (Establishment and Constitution) Order 1995(d);

“mixed dispute” means a dispute that falls within direction 4(a) to (c) or 5 where that dispute-

- (a) will also involve the determination of matters that are not specified in direction 4(a) to (c) or 5, or

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- (a) Section 16D was substituted by the Health Act 1999 (c.8), section 12(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 3(2) and Schedule 1, paragraph 6; section 18, subsections (1) to (1B) were substituted by the Health Act 1999 (c.8), section 21(3) and amended by the National Health Service Reform and Health Care Professions Act 2002, Schedule 1, paragraph 9. Section 17 was substituted by section 12 of the Health Act 1999 (c.8) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 1, paragraph 7. As respects Wales, the powers to give directions under these sections have been transferred to the National Assembly for Wales, *see* article two of, and the entry in relation to, the National Health Service Act 1977 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672.
- (b) The Default Contract 2004 is published by the Department of Health. It is available on their website at www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/GPContracts or a copy can be obtained by writing to the Department of Health, Room 3E46, Quarry House, Quarry Hill, Leeds LS2 7UE.
- (c) 1977 c.49. Section 49S was inserted by the Health and Social Care Act 2001 (c.15), section 27(4) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 1(3) and Schedule 1, paragraphs 1 and 18.
- (d) S.I.1995/621. The name of the Family Health Services Appeal Authority was changed to the Family Health Services Appeal Authority (Special Health Authority) by S.I. 2001/3562.

(b) involves, or is likely to involve, a claim by either party for a direction from the adjudicator that payments should be made by either party to the other party;

“the Order” means the General and Medical Services Transitional and Consequential Provisions Order 2004(a);

“the Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004(b);

“relevant Strategic Health Authority” means the Strategic Health Authority established for an area which includes the area for which the Primary Care Trust is established where the Primary Care Trust is a party to a GMS contract or a default contract, and there is a dispute between the Primary Care Trust and the contractor in relation to that GMS contract or default contract;

and “closure notice”, “contractor’s list of patients” and “NHS dispute resolution procedure” have the meanings assigned to them in the Regulations.

Functions exercisable by a relevant Strategic Health Authority

3. The functions of the Secretary of State set out in—

- (a) paragraph 36 of Schedule 6 to the Regulations (assignments to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel);
- (b) paragraphs 101 and 102 of Schedule 6 to the Regulations (dispute resolution), insofar as those functions relate to the matters specified in direction 4; and
- (c) article 33 of the Order (dispute resolution procedure for default contracts), insofar as those functions relate to the matters specified in direction 5,

shall be exercised on his behalf by the relevant Strategic Health Authority.

4. A relevant Strategic Health Authority shall only exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(b) in respect of any dispute referred to the NHS dispute resolution procedure that arises out of:-

- (a) the rejection of a closure notice by a Primary Care Trust pursuant to paragraph 31 of Schedule 6 to the Regulations (rejection of closure notice by the Primary Care Trust);
- (b) the assignment of a patient to a contractor’s list of patients pursuant to paragraph 32 of Schedule 6 to the Regulations (assignment of patients to lists: open lists); or
- (c) the assignment of a patient to a contractor’s list of patients pursuant to paragraph 33 of Schedule 6 to the Regulations (assignment of patients to lists: closed lists),

and only if the dispute referred is not a mixed dispute.

5. A relevant Strategic Health Authority shall only exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(c) in respect of any dispute referred to the dispute resolution procedure that arises out of the assignment of a patient to a contractor’s list of patients pursuant to clause 144 of the default contract (assignment of patients to lists: open lists), and only if the dispute referred is not a mixed dispute.

6. Any function to be exercised by a relevant Strategic Health Authority pursuant to these Directions shall be exercised by the chairman, a member or an officer of that Authority, or any two or more of such persons.

7. Strategic Health Authorities shall co-operate with the FHSAA or the FHSAA(SHA) (as the case may be) in respect of any function to be exercised by either of those bodies pursuant to-

(a) S.I. 2004/433.
(b) S.I. 2004/291.

- (a) the Directions as to the functions of the Family Health Services Appeal Authority (Special Health Authority) (GMS Contract Disputes) 2004 which came into force on 9th March 2004; and
- (b) the Directions as to the functions of the Family Health Services Appeal Authority (GMS Contract Disputes) 2004 which came into force on 9th March 2004,

insofar as it is necessary to ensure the just, expeditious, economical and final determination of any dispute arising in relation to a GMS contract or a default contract.

Signed by authority of the Secretary of State

Richard Armstrong

A Member of the Senior Civil Service

Department of Health

8th March 2004